Refund of Imputation Credits

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1. INTRODUCTION

The purpose of this paper is to explain the features of the new provisions for the refund of imputation credits, which are contained in the *New Business Tax System (Miscellaneous) Act* (No1) 2000.[1] The provisions have been introduced to ensure that:

- certain eligible resident taxpayers are taxed on their dividend income at their personal marginal rate of tax; and
- certain eligible resident nonprofit organisations can apply their tax exemption on their dividend income.

The provisions are contained in Division 67[2] of the *Income Tax Assessment Act* 1997[3] for refunds to resident individuals and superannuation entities and Division 7AA of Part IIIA[4] of the *Income Tax Assessment Act* 1936[5] for refunds to endorsed income tax exempt charities[6] and certain deductible gift recipients.[7]

These measures were recommended by the Industry Commission Inquiry into charitable organisations in 1995[8] and were subsequently foreshadowed in the reform policy proposed by the current Government in August 1998 in the pre-election plan for a "New Tax System".[9]

The provisions were actually implemented as the result of the current tax reform program.[10] The Review Committee recommended refunding excess imputation credits to resident individuals and complying superannuation entities from 1 July 2000 and to registered charities where imputation credits were received through a trust distribution by way of a donation from 1 July 2001.[11]

The Government accepted the recommendation[12] which was originally introduced in the House of Representatives on 9 December 1999 as the *New Business Tax System (Miscellaneous) Bill* 1999.

On 13 April 2000, the application of the new provisions were extended to all franked dividends paid on or after 1 July 2000 to endorsed ITECs and certain DGRs either directly from companies or indirectly through trust distributions.[13]

Consequently, on 7 June 2000, the *New Business Tax System (Miscellaneous) Bill* 1999 was amended by the Senate (previously passed by the House of Representatives as unamended) to make effect into law the announcement made by the Treasurer.[14] The *New Business Tax System (Miscellaneous) Bill* 1999 was assented to on 30 June 2000 as the *New Business Tax System (Miscellaneous) Act (No 1) 2000*.[15]

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[1] Royal Assent was given on 30 June 2000
[2] Sections 67-10 to 67-35 inclusive
[3] Hereinafter referred to as ITAA97
[4] Sections 160ARDAA to 160ARDAF inclusive
[5] Hereinafter referred to as ITAA36
[6] Hereinafter referred to as ITECs
[7] Hereinafter referred to as DGRs
[8] Industry Commission, Charitable Organisations in Australia, Report No. 45, 16/6//95, p 317-318
[9] Peter Costello, August 1998, Tax Reform Not A New Tax, AGPS, p113-115
[10] Review of Business Taxation: A Tax System Redesigned, July 1999 p 425, released 21/9/99 as " A New Tax System"
[11] Recommendation No 11.7 of the "Review of Business Taxation" Report
[12] Treasurer's Press Release No 58, 21/9/99 Attachment K
[13] Treasurer's Press Release No 24, 13/4/2000
[14] Schedule 2 of the *New Business Tax System (Miscellaneous) Act* 1999
[15] Additional technical corrections ensuring entitlements to refunds of imputation credits and taking effect from 1 July 2000 have been included in Schedule 5 of *Taxation Laws Amendment Bill* (No 2) 2001 introduced into the House of Representatives on 7 June 2001

The costs to the Government from these legislative amendments in relation to ITECs and DGRs have been estimated[16] to be:

2000-2001	2001-2002	2002-2003	2003-2004
--	$50m	$50m	$50m

The Government has not released the source of the information used to calculate such projections. However, using $50m as representing refunded imputation credits and using a 30% corporate tax rate, the Government appears to have estimated that the nonprofit sector has investments in share portfolios paying annually $167m in franked dividends. Lyons and Hosking have estimated that nonprofit organisations, which qualify legally as charities, derived interest and dividend income of $223.5m in the 1995/96 financial year.[17]

It further appears that the Government does not foresee any changes in the investment policies employed by the nonprofit sector from changes in the legislation, as the financial impact for the Government is not expected to change over the next three financial years. Only the future will tell whether or not the Government effectively costed the policy impact on its revenue collection.

The provisions apply to dividends paid to eligible resident taxpayers on or after 1 July 2000 except for non-complying superannuation entities, where amended provisions will apply from the year of income ending on or after 22 May 2001.[18]

Under these amendments, non-complying superannuation entities, which are taxed at 47%, will be denied refunds of excess imputation credits. This will continue the Government's policy of providing tax concessions only to complying superannuation entities established for the provision of retirement benefits to their members.

Effectively, from 1 July 2000, certain resident taxpayers receive the full economic benefits for tax paid by another taxpayer (that is, a company) on their behalf. Refunds of excess imputation credits are not returned to the company, which originally paid the tax, but are paid directly to the ultimate recipient of the franked dividends. For certain tax-exempt organisations, these measures will provide a significant financial benefit in relation to their investments in share portfolios previously denied to them.

Prior to 1 July 2000, tax-exempt organisations could not offset imputation credits to reduce an income tax liability, as they are exempt from income tax on all their income. As tax-exempt organisations could not access the benefits associated with the underlying tax already paid by the company, they were in effect paying tax on their dividend income at the company rate of tax.

However from 1 July 2000, certain tax-exempt organisations will be entitled to receive the full benefit of the underlying tax paid by the company on franked dividends through refunds of all the imputation credits attached to franked dividends.

[16] The Explanatory Memorandum of Schedule 2 of the *New Business Tax System (Miscellaneous) Act* 1999, "General outline and financial impact"
[17] Lyons, M & Hocking S, "Dimensions of Australia's Third Sector – a Report from the Australian Nonprofit Data Project" CACOM, UTS, Sydney, 2000 at p 77
[18] 2001-02 Federal Budget paper No 1, 22/5/01 pp 1-27 and Assistant Treasurer's Press Release No 19, 22/5/01

2. OUTLINE

This paper has been prepared as a guide to assist nonprofit organisations understand the application of the new provisions for the refund of imputation credits. It addresses the following issues:

Nonprofit organisations should go to the section entitled "Endorsed tax-exempt charities and gift-deductible recipients" for an explanation of the new provisions as they directly apply to them including their eligibility for refunds of imputation credits.

A Self-Assessment checklist has also been included for use by nonprofit organisations at page 24.

3. OVERVIEW OF THE IMPUTATION SYSTEM

Generally most shareholders receive income from a company in the form of dividends paid out of the "after tax income" of the company. The shareholders may be any entities[19] such as individuals, partnerships, trusts, superannuation funds or other companies.

Shareholders of a company who receive dividend income receive the benefit of the tax paid by those companies. This is commonly referred to as "the imputation system".[20]

[19] As defined under section 960-100 ITAA97
[20] Part IIIAA ITAA36 (sections 160APA to sections 160ASN inclusive)

Using a "gross up and credit" approach, the imputation system ensures that tax paid by a company on its taxable income is imputed to its shareholders on dividend distributions to avoid the double taxation of the company's profits (that is, once when the profits are derived by the company and again when these profits are distributed to the shareholders in the form of dividends).

The term "franked" means that the company paying the dividend has paid tax on the profits it derived. This amount of tax paid is referred to as "imputation credits" and is passed on to the shareholders receiving franked dividends.

When a shareholder receives a franked dividend, the dividend and the imputation credits are included as assessable income of the shareholder.[21] This is the process called "grossing up". Then an amount equal to the imputation credits (that is, a franking rebate) is offset against the tax payable by the shareholder. The credits reflect the tax already paid by the company on its profits.

As the imputation credits are calculated in reference to the company rate of tax,[22] there will often be differences between the amount of imputation credits passed on to the shareholders and their personal marginal rate of tax. If the imputation credits exceed the total tax payable by the shareholder, there may be an entitlement to a refund at the end of the financial year from 1 July 2000. If the imputation credits are less than the total tax payable by the shareholder, there will have an additional tax liability to the shareholder.

A shareholder may also receive unfranked dividends when no company tax has been paid on the profits out of which the dividend is paid. In such instances, any tax liability due and payable on the dividend income is borne by the shareholder.

4. TAXATION OF DIVIDENDS PRIOR TO 1 JULY 2000

Prior to 1 July 2000,

- company profits were taxed at the company level; and
- shareholders on marginal rates above the company rate effectively paid additional tax on their dividend income; and
- shareholders on marginal rates below the company rate lost the benefit of imputation credits exceeding their tax payable. There were no refunds or carry forward in subsequent years of the unused imputation credits.

Example

Resident company with only one shareholder
Year ended 30 June 2000

	$
Taxable income	60,000
Taxed at 36%	21,600
Franked dividend distributed to shareholder	38,400

[21] Section 160AQT ITAA36
[22] The company tax rate is 34% from 1 July 2000 and 30% from 1 July 2001 and subsequent years

Resident Individual shareholder
Year ended 30 June 2000
Ignore Medicare levy

	$
Franked dividend subsection 44(1)	38,400
Gross up amount section 160AQT	
$38,400 x 36/64	21,600
Taxable income	60,000
Assuming taxed at 47%	28,200
Less section 160AQU franking rebate	21,600
Tax payable	6,600

	$
Disposable income	
($38,400 - $6,600)	31,800
Total tax paid	
($21,600 + $6,600) (or 47% of $60,000)	28,200
	60,000

As the individual resident shareholder has a top marginal tax rate (that is, 47%) greater than the company tax rate (that is, 36%), the shareholder has an additional tax liability on the dividend income received based on the difference in tax rates (that is, $6,600 or 11% of $60,000).

Example

Resident Individual shareholder
Year ended 30 June 2000

	$
Salary and wages	13,000
Franked dividend subsection 44(1)	6,400
Gross up amount section 160AQT	
$6,400 x 36/64	3,600
Taxable income	23,000
Tax payable	3,280
Less section 160AQU franking rebate	3,600
	nil
Add Medicare levy at 1.5% of $23,000	345
Tax payable	345

Even though there are excess imputation credits, which cannot be refunded to the taxpayer, there remains a tax liability in the hands of the resident individual shareholder. This arises because the Medicare levy is not regarded as income for the purposes of claiming the imputation credits but it is charged on the "grossed-up amount" included in the assessable income of the shareholder.

Example

Resident partnership
Year ended 30 June 2000

	$
Franked dividend subsection 44(1)	38,400
Gross up amount section 160AQT	21,600
Net income	60,000

Distribution of partnership net income		
Partner Blue	50%	30,000
Partner Yellow	50%	30,000

As a partnership is not a separate legal entity, it is not taxable. Any tax liability is paid by individual partners on their share of the partnership income.

Resident Individual Partner Blue
Year ended 30 June 2000
Ignore Medicare levy

	$
Partnership distribution section 160APA	30,000
Income from other sources	45,000
Taxable income	75,000
	$
Tax payable	22,630
Less section 160AQZ franking rebate	
(i.e. 50% of $21,600)	10,800
	11,830
Add Medicare levy at 1.5% of $75,000	1,125
Tax payable	12,955

Dividend income retains its character when received by a partner indirectly through a partnership.[23] The same result would occur in the case of a trust where a beneficiary is presently entitled to 50% of the net income of the trust[24]

Again as per the previous example, there remains a tax liability for the Medicare levy even though there is an excess of imputation credits, which cannot be refunded to the taxpayer.

Example

Resident partnership
Year ended 30 June 2000

	$
Franked dividend subsection 44(1)	38,400
Gross up amount section 160AQT	21,600
	60,000
Allowable deductions	75,000
Partnership loss	(15,000)

[23] Section 6B ITAA36
[24] Section 160AQX ITAA36

Distribution of partnership net loss		
Partner Blue	50%	(7,500)
Partner Yellow	50%	(7,500)

Where a partnership has derived a loss in a particular financial year, the losses will be distributed to the partners who may offset their share of the losses against other income.

Resident Individual Partner Blue
Year ended 30 June 2000
Ignore Medicare levy

	$
Partnership distribution section 160APA	(7,500)
Assume income from other sources	50,500
Taxable income	43,000
Tax payable	9,280
Less section 160AQZ franking rebate	10,800
	nil
Add Medicare levy at 1.5% of $43,000	645
Tax payable	645

The imputation credits are available to the partner even though the partnership incurred an overall loss.

In the case of a trust, losses cannot be distributed to beneficiaries and offset against their other income and therefore imputation credits are not available to the beneficiaries.

5. TAXATION OF DIVIDENDS FROM 1 JULY 2000

5.1 Application of the new provisions

To the extent that the dividends received are franked, certain taxpayers are entitled to a franking rebate for the imputation credits attached to the franked dividends they received. For ease of expression, references throughout this paper to “imputation credits” means “franking rebates”.

From 1 July 2000, there will be a refund entitlement when the total imputation credits received from franked dividends paid on or after 1 July 2000 are greater than the eligible resident taxpayer’s total tax liability remaining after using all other tax rebate entitlements.

Eligible resident taxpayers will effectively be taxed on their dividend income at their top marginal rate of tax in the case of individuals or their actual rate of tax for other entities that is, 15% for superannuation entities or nil for endorsed ITECs and certain DGRs.

Division 67 only applies to franked dividends paid on or after 1 July 2000. Where a taxpayer received a franked dividends paid before 1 July 2000, the excess imputation credits are not refundable and the old provisions continue to apply.

Where a beneficiary of a trust (or a partner in a partnership) receives a franked dividend from the trust (or the partnership) as a distribution of profits, the franked dividend must have been originally paid by the company to the trust (or the partnership) on or after 1 July 2000 for the beneficiary (or the partner) to be entitled to a refund of excess imputation credits.

Example

The net income of a trust includes a franked dividend of $9,000 received on 31 May 2000 and another franked dividend of $7,500 received on 19 October 2000.

The trust has a substituted accounting period of 1 December to 30 November. The trustee makes a resolution to distribute all the franked dividends to an individual resident beneficiary on 30 November 2000.

If the beneficiary's taxable income for the year ended 30 June 2001 includes only the trust distribution, he/she is entitled to a refund of imputation credits relating to the franked dividend of $7,500 that the trust received on 19 October 2000.

The other dividend was paid to the trust prior to 1 July 2000 and the beneficiary is not entitled to a refund of imputation credits relating to that franked dividend.

	$
Trust distribution	16,500
Gross up amount section 160AQT	
$9,000 x 36/64	5,063
$7,500 x 34/66	3,864
Taxable income	25,427
Tax payable	4,008
Less section 160AQU franking rebate on dividend	
paid prior to 1 July 2000	5,063
	nil
Add Medicare levy at 1.5% of $25,427	381
Less section 160AQU franking rebate on dividend	
paid after 1 July 2000	3,864
Tax refund	3,483

The excess imputation credits in relation to the franked dividend paid to the trust before 1 July 2000 (that is, $5,063 - $4,008 = $1,055) is lost and not refundable to the beneficiary.

From 1 July 2000, any Medicare levy liability is offset against any refundable excess imputation credits ($3,864 - $381 = $3,483).

5.2 Eligible taxpayers

Imputation credits are refundable[25] where the eligible resident taxpayer is entitled to a franking rebate in the first instance.

Furthermore, it should be noted that the legislation makes a small, but relevant, distinction between:

- an eligible resident taxpayer required to lodge an income tax return; and
- an eligible resident taxpayer **not** required to lodge an income tax return.

Where there is an obligation to lodge an income tax return, the eligible resident taxpayer is entitled to **a refund of excess imputation credits**, that is, imputation credits over and above what is required to met the taxpayer's income tax liability.

[25] Refundable imputation credits are tax offsets subject to the refundable tax offset rules as referred to under section 67-25 ITAA97

Where there is no obligation to lodge an income tax return, as is the case for ITECs and DGRs, the provisions provide for a **refund of the imputation credits**, that is, all imputation credits will be refunded as the taxpayer has no income tax liabilities.

Subject to the anti-avoidance provisions, eligible resident taxpayers entitled to a refund of excess imputation credits or a refund of imputation credits [26] are:

- individuals including partners and beneficiaries of a trust;[27]
- trustees assessed under section 98 or 99 (but not 99A) ITAA36 on a resident beneficiary's share of trust income;[28]
- complying superannuation funds;[29]
- approved deposit funds;[30]
- life assurance companies (in respect of their superannuation business);[31]
- registered organisations[32] (in respect of their superannuation business);
- pooled superannuation trusts;[33]
- endorsed income tax exempt charities;[34] and
- certain endorsed deductible gift recipients.[35]

5.3 Non-eligible taxpayer

(a) Non-complying superannuation entities

Non-complying superannuation entities are not eligible for refunds of excess imputation credits in relation to dividends paid in an income year ending on or after 22/5/2001.[36]

These entities are taxed on their income at 47% and would generally not be able to claim refunds of imputation credits unless their tax position is such that there is either no tax liability (for example, the entities have carry forward losses) or there is a surplus of imputation credits (for example, the entities have entered into artificial schemes).

These amendments will maintain the integrity of the Government policy in providing tax concessions to complying superannuation entities which are established for the sole purpose of providing retirement benefits to their members.

(b) Corporate entities

Other than ITECs, DGRs and life insurance companies, corporate entities are not eligible for the refunds of excess imputation credits.

An intercorporate rebate exists to prevent the consequential taxing of profits through a chain of companies. The rebate generally has the effect of making franked dividends paid between Australian resident companies tax-free.[37]

[26] Subsection 67-25(1) ITAA97
[27] Sections 160AQU, 160AQX and 160AQZ ITAA36
[28] Section 160AQY ITAA36
[29] Section 160AQYA ITAA36
[30] Section 160AQYA ITAA36
[31] Section 160AQZA ITAA36
[32] A registered organisation is an association registered as a trade union or a friendly society; or an association of employees that is an organisation within the meaning of the *Workplace Relations Act* 1996
[33] Section 160AQYA ITAA36
[34] Section 160ARDAB ITAA36
[35] Section 160ARDAB ITAA36
[36] 2001-02 Federal Budget paper No 1, 22/5/01 pp 1-27 and Assistant Treasurer's Press Release No 19, 22/5/01
[37] Section 46 ITAA36

(c) Non-resident individuals

Where a non-resident individual receives a franked dividend from a resident company, the dividend is not subject to additional tax. The imputation credits are deemed the final tax liability and therefore there is no entitlement to a refund of excess imputation credits.

The portion of the dividend that is unfranked is subject to withholding tax. Withholding tax is the only tax that is payable in respect of any dividend paid to a non-resident shareholder, that is, it is a final tax.[38]

(d) Certain trustees

A refund of imputation credits is not available to an eligible organisation if it is acting in the capacity of trustee for another entity or person.[39]

Eligible organisations such as charitable trusts always act for a particular purpose or purposes. Such trusts do not act for or on behalf of beneficiaries. Therefore, it would appear that this provisions would have limited, if any, application.

6. REFUND OF EXCESS IMPUTATION CREDITS

6.1 Calculation of the refund

There will be a refund of imputation credits available to the relevant taxpayer when the total imputation credits from franked dividends paid on or after 1 July 2000 exceed the amount of income tax payable once all other tax rebate entitlements have been taken into account to reduce the taxpayer's tax liability to nil.[40] The amount of the refund is the amount of the excess imputation credits.[41]

6.2 Resident individuals

Resident individual taxpayers are eligible for refunds of excess imputation credits when they receive a franked dividend:

- as shareholders in a company;[42]
- as partners in a partnership;[43] and
- as beneficiaries of a trust.[44]

[38] Section 128D ITAA36
[39] Subparagraphs 160AQU(1)(b(ii) and 160AQX(1)(b)(iii) ITAA36
[40] Section 67-30 ITAA97
[41] Section 67-35 ITAA97
[42] Section 160AQU ITAA36
[43] Section 160AQZ ITAA36
[44] Section 160AQX ITAA36

The refund of excess imputation credits for a resident individual taxpayer is calculated as follows:[45]

Step 1 Calculate the basic income tax liability by applying the tax rates and any special provisions that apply to the taxpayer;

Step 2 Subtract any tax rebate entitlements for the year of income (except the private health insurance rebate and refundable imputation credits);

Step 3 Add any other tax liabilities such as Medicare levy and HECS repayments;

Step 4 Subtract any entitlements to the private health insurance rebate and refundable imputation credits;

Step 5 Subtract any PAYG tax instalments deductions or similar payments of tax;

Step 6 If the result from step 4 or step 5 is negative, the taxpayer is entitled to a refund equal to that amount.

Example

For the financial year ending 30 June 2001, an individual Australian resident has a taxable income of $20,400. She is entitled to a spouse rebate of $1,365 and to $3,500 imputation credits for dividends paid on or after 1 July 2000. Her refund is calculated as follows:

	$
Tax on taxable income	2,500
Add Medicare levy at 1.5% of $20,400	306
	2,806
Less spouse rebate	1,365
Less imputation credits	3,500
Tax refund	2,059

Prior to 1 July 2000, the taxpayer would have received a tax assessment for the amount of the Medicare levy and would not have been entitled to a refund of excess imputation credits ($3,500 - $1,135 = $2,365)

	$
Tax on taxable income	2,500
Less spouse rebate	1,365
	1,135
Less section 160AQU rebate	3,500
	Nil
Add Medicare levy at 1.5% of $20,400	306
Tax payable	306

45 Section 67-30 ITAA97

Example

An individual Australian resident has a taxable income of $57,400; her HECS liability repayments are $500; her employer deducted $15,000 in PAYG from her salary and she is entitled to private health insurance rebate of $250. Her taxable income includes:

- $27,000 franked dividends received as a trust distribution on 31 August 2000. The franked dividends were originally received by the trust on 1 May 2000; and

- $2,200 franked dividends paid on 1 September 2000 from her own share portfolio.

Her tax refund is calculated as follows:

	$
Tax on taxable income of $57,400	14,488
less imputation credits for dividends paid before 1/7/00 ($27,000 x 36/64)	15,188
Tax payable	nil
Add Medicare levy at 1.5% of $57,400	861
Add HECS repayments	500
	1,361
less imputation credits for dividends paid on or after 1/7/00 ($2,200 x 34/66)	1,133
Less private health insurance rebate	250
Less PAYG credits	15,000
Tax refund	15,022

The taxpayer will not get a refund for the excess imputation credits paid on the dividend received by the trust on 1 May 2000 ($15,188 - $14,488 = $700).

6.3 Trustees

Only trustees assessed under sections 98 or 99 ITAA36 can receive a refund of any excess imputation credits.[46] This limitation has been placed on trustees to ensure that taxpayers are taxed at their personal marginal rate of tax on all their dividend income.

Where an assessment is raised on a trustee under any other provisions of the Act such as section 99A ITAA36, no refund of excess imputation credits is allowable because the trustee is assessed at the top marginal tax rate which is not reflecting the tax rate of any particular beneficiary.[47] Section 99A is in effect a penal provision.

(a) Trustee assessment under section 98 ITAA36

Where a beneficiary is presently entitled to a share of the trust net income but is under a legal disability (such as infancy, mental illness or bankruptcy), the trustee is assessed under section 98 as if the beneficiary's share of the trust's net income were the only income derived by the beneficiary. The trustee is taxed only in his/her capacity as trustee.

If the share of the trust's net income includes a franked dividend, the trustee includes the imputation credits[48] and is then entitled to a franking rebate[49] equal to the amount of the imputation credits.

[46] Section 169AQY ITAA97
[47] Subsection 67-25(1) ITAA97
[48] Section 160AQT ITAA36
[49] Section 160AQY ITAA36

Section 67-35 allows a refund of excess imputation credits to the trustee to the extent the imputation credits exceed the tax payable.

Example

During the year ending 30 June 2001, the sole beneficiary of a family trust is an Australian resident under a legal disability. The net income of the trust consists only of a franked dividend of $25,000.

The trustee's assessment under section 98 is as follows:

	$
Franked dividend	16,500
Gross up amount sec 160AQT 16,500 x 34/66	8,500
Taxable income	25,000
Tax payable	3,880
Add Medicare levy at 1.5% of $25,000	250
Less imputation credits	8,500
Refund to the Trustee	4,370

The trustee is entitled to a refund of the excess imputation credits of $4,370, which would have otherwise been lost under the provisions applicable prior to 1 July 2000.

(b) Trustee assessment under section 99 ITAA36

Where no beneficiary is presently entitled to part or whole of the trust's net income, the trustee is assessed under section 99 on the income, which is retained or accumulated in the trust by the trustee.

This section applies to:

- a trust which is a deceased estate within the first three years of administration where there are no beneficiaries presently entitled to the net trust income;
- a trust which is a bankrupt estate;
- a trust which consists of specific type of compensation property,[50] and
- where the Commissioner forms the opinion that it would be unreasonable to apply section 99A.

The trustee is assessed and pays income tax on the trust net income to which no beneficiary is presently entitled to as if the trustee were a resident individual.

Section 67-35 allows a refund of excess imputation credit to the extent that the imputation credits exceed tax payable.

[50] Paragraph 102AG(2)(c) ITAA36

Example

During the year ending 30 June 2001, a deceased estate in its first year of administration received a franked dividend of $3,000. The trustee's assessment under section 99 is as follows:

	$
Franked dividend	3,000
Gross up amount sec 160AQT 3,000 x 34/66	1,545
Taxable income	4,545
Tax payable	nil
Less imputation credits	1,545
Refund to the Trustee	1,545

As the total assessable income is below the minimum threshold for any tax liability to arise, the trustee is entitled to a refund for the total amount of imputation credits (which would have been otherwise lost prior to 1 July 2000).

6.4 Superannuation entities

When a complying superannuation entity[51] receives franked dividends, they are included as assessable income as if the entity were a resident individual taxpayer, that is, the assessable income is grossed up to include the amount of any imputation credits.

Even though a complying superannuation entity has a tax rate of only 15%, it is entitled to offset any imputation credits against its tax liability on any of its income including:

- capital gains,
- taxable contributions,
- dividends that are exempt income,[52]
- franked dividends received indirectly through a trust[53] or a partnership.[54]

If the superannuation entity's tax liability is less than the imputation credits received with its franked dividend income, then the entity is entitled to a refund of the excess imputation credits.

7. ENDORSED TAX EXEMPT CHARITIES AND GIFT-DEDUCTIBLE RECIPIENTS

7.1 Prior to 1 July 2000

Prior to 1 July 2000, resident tax-exempt organisations were not entitled to a refund of the underlying tax paid by the company on their dividend investments. The imputation credits paid to these organisations were lost because of their tax-exempt status as they could not use the benefits of offsetting the imputation credits against other income subject to tax.

Effectively, tax-exempt organisations were subject to underlying tax on their dividend income when received either directly through a company or indirectly through a trust. This tax treatment resulted in different benefits being derived when funds were invested in share portfolios and real properties (such as land and buildings) even though the pre-tax values of these investments may have been the same. This meant that share portfolios were not a tax effective form of investments for tax-exempt organisations.

[51] Superannuation fund, ADF or PST
[52] Section 282B ITAA36, section 297B ITAA36
[53] Section 160AQYA ITAA36
[54] Section 160AQWA ITAA36

7.2 From 1 July 2000

From 1 July 2000, certain exempt organisations including trusts, unincorporated associations and companies are eligible for refunds of imputation credits under Division 7AA of Part IIIAA ITAA36 on:

- dividends received directly as a shareholder of the company; or
- distributions received indirectly as a beneficiary of a trust that received a franked dividend.

No refund of imputation credits is extended to franked dividends received indirectly through a partnership.[55]

Eligible organisations will receive a refund equal to the imputation credits associated with the receipt of franked dividends since they are otherwise exempt from tax on all income derived.

The design of the dividend imputation provision under the ITAA36 does not allow franking rebates for tax-exempt organisations. Therefore, for the purpose of franking rebate entitlement (and therefore the refund of imputation credits), the exempt status of eligible tax-exempt organisations is disregarded.[56]

7.3 Eligible organisations

An exempt organisation is defined[57] as an entity whose ordinary and statutory income is exempt from income tax under Division 50 ITAA97. However not all entities under Division 50 are entitled to refunds of imputation credits. The entitlement to such refunds has been limited to endorsed charities ITECs and DGRs.[58]

There are five different categories of exempt organisations which are eligible for a refund of imputation credits, that is, they must satisfy one of four tests or be prescribed by income tax assessment regulations.

(a) The first test

The first test[59] is satisfied if the organisation:

- is tax exempt under section 50-5 because:
  - o it is a charitable institution, that is an institution established for the relief of poverty, sickness, destitution, helplessness or the needs arising from old age; the advancement of education; the advancement of religion; or other purposes beneficial to the community;[60] or
  - o it is a fund established for public charitable purposes by will or under a trust commonly known as charitable trusts.[61]
- is endorsed under Subdivision 50-B ITAA97 as an approved income tax exempt entity; and
- is a resident of Australia[62], that is, it has a physical presence[63] in Australia and incurs its expenditure and pursues its objectives principally in Australia at all times during the year of income in which the dividend giving rise to a refund claim has been received.

[55] Subsection 160ARDAB(1) ITAA36
[56] Section 160APA ITAA36; section 160ARDAB ITAA36
[57] Section 160APA ITAA36
[58] Entities which satisfy the tests prescribed under section 160ARDAB ITAA36
[59] Subsection 160ARDAB(2) ITAA36
[60] Item 1.1, section 50-5 ITAA97
[61] Items 1.5, 1.5A and 1.5B of section 50-5 ITAA97
[62] Subsection 160ARDAB(7) ITAA36
[63] Taxation Ruling TR 2000/11 explains the term "physical presence" at paragraphs 50 and 52

Generally, only charities with an Australian Business Number[64] can seek endorsement as an income tax exempt charity.[65]

Examples of such organisations are contained in the Charity Pack and include, but are not limited to:

- Alzheimer's Associations;
- Wildlife Protection societies;
- Public Art Galleries;
- Volunteer Emergency Rescue bodies; and
- Intellectually Handicapped Associations.

For further information regarding such organisations, reference should be made to the Charity Pack.

(b) The second test

The second test[66] is satisfied if the exempt organisation is:

- endorsed as a deductible gifts recipient in its own right[67] including corporations, unincorporated associations, trusts, partnerships and government entities; and
- is a resident of Australia.[68]

The second test does not apply where the endorsement as a DGR is only for a fund, authority or institution that the DGR operates.[69]

For example, an endorsed school building fund is not eligible for refunds of imputation credits.[70] The school is endorsed as a DGR only because of the fund it operates. The school building fund itself is not an entity in its own right[71] nor it is not a legal person, which can hold shares.[72] If the school building fund is established as a trust it may be eligible for refunds of imputation credits. In such instances, the trust (as an entity) would seek endorsement as a DGR.

An entity may be an endorsed as a DGR for a fund it operates as well as an endorsed ITEC in its own right. In the above example, the school, itself would usually qualify as an ITEC under the first test and would then qualify for refund of imputation credits on dividend income it receives.

(c) The third test

The third test[73] is satisfied if the exempt organisation:

- is described by name as a recipient of deductible gifts under Subdivision 30-B ITAA97 whether or not they are endorsed;
- has an ABN; and
- is a resident.[74]

[64] Hereinafter referred to as ABN
[65] Charity Pack, April 200, AGPS, NAT3131-4.2000, Chapter 2 p16; Taxation Ruling TR2000/11
[66] Subsection 160ARDAB(3) ITAA36
[67] Subsection 30-120(a) and 30-125 ITAA97
[68] As previously explained under the first test
[69] Subsection 30-120(b) ITAA97
[70] Subsection 160ARDAB(3) ITAA36
[71] As defined under section 996-100 ITAA97
[72] Gift Pack, May 200, AGPS, NAT3132-5.2000, Chapter 1; Taxation Ruling TR2000/9
[73] Subsection 160ARDAB(4) ITAA36
[74] As previously explained under the first test

Examples of such organisations are contained in the Gift Pack and include, but are not limited to:

- New South Wales College of Nursing;[75]
- Foundation of Gambling Studies;[76]
- Amnesty International;[77]
- Greening Australia Limited;[78] and
- Guides Australia Incorporated.[79]

For further information regarding such organisations, reference should be made to the Gift Pack.

(d) The fourth test

The fourth test[80] is satisfied if the exempt organisation:

- is a public fund declared by the Treasurer to be a relief fund by notice in the Gazette [81] and
- has been established by an organisation declared by the Minister for Foreign Affairs to be an approved organisation; and
- is solely for the relief of people in a country declared by the Minister for Foreign Affairs to be a developing country.

The declaration must be in writing and signed by the Minister for Foreign Affairs.[82] At the time of writing this paper, such organisations include:

- Australian Institute of International Affairs;
- Foundation for Development Cooperation Ltd; and
- Australian American Education Leadership Foundation Limited.

(e) Prescribed by income tax regulations

Where an exempt organisation cannot satisfy any of the four abovementioned tests, it can be prescribed in the Income Tax Assessment Regulations as being eligible for the refund of imputation credits.[83]

The legislation does not provide any specific procedures for seeking prescription under the regulations. Applications must be forwarded to the Government, which has the only available authority for consideration.

As at April 2000, there were five organisations, including their members, prescribed as charitable institutions:[84]

- Australian Advisory Council of the Christian Leaders' Training College of Papua New Guinea;
- Australian Evangelical Alliance Incorporated (Missions Interlink);
- Evangelical Missionary Alliance NSW;
- Steer Incorporated; and
- Zebedee Investments Ltd.

[75] Item 1.2.5, section 30-20 ITAA97
[76] Item 2.2.19, section 30-25 ITAA97
[77] Item 4.2.1,sSection 30-45 ITAA97
[78] Item 6.2.2, section 30-55 ITAA97
[79] Item 10.2.2,section 30-90 ITAA97
[80] Subsection 160ARDAB(5) ITAA36
[81] Subsection 30-85(2) ITAA97
[82] Subsection 30-85(5) ITAA97
[83] Subsection 160ARDAB(6) ITAA36
[84] Income Tax Assessment Regulations 1997, Reg 50-50.1

7.4 Multiple franking rebates

Where there is a flow through distribution of franked dividends to an eligible organisation received directly or indirectly from another tax-exempt entity, the eligible organisation is not entitled to a refund of imputation credits.[85]

This provision prevents multiple claims for refunds of imputation credits from a single franked dividend. In such instances only the first eligible organisation recipient is entitled to claim any refund of imputation credits.

In other words, where a franked dividend is distributed through a number of eligible organisations, only the first recipient is entitled to claim any refunds, that is, the subsequent recipient effectively receives an unfranked dividend equal in amount to the original franked dividend and its imputation credits.

The entitlement for refunds of imputation credits cannot be passed on to the next recipient. Even if the original recipient did not claim any refunds, the beneficiary would still not be eligible for the refund of imputation credits.

Example

> For the year ending 30 June 2001, an endorsed charitable trust receives a franked dividend of $3,300, which it subsequently distributes to one of its beneficiary (another endorsed organisation) eligible for refunds of imputation credits.
>
> On or after 1 July 2001, the endorsed charitable trust is entitled to claim a refund of imputation credits of $1,700 (that is, $3,300 x 34/66). It now has a total disposable amount of $5,000 (that is, $3,300 + $1,700), which it can distribute to its beneficiary. The amount of $5,000 in the hands of its beneficiary is now an unfranked dividend, that is, a dividend on which no income tax has effectively been paid because the tax originally paid by the company has been refunded to the eligible charity trust.

7.5 Anti-avoidance provisions

7.5.1 General anti avoidance rules

Where the general anti-avoidance rules of Part IVA ITAA36, franking credit trading or dividend streaming arrangements are triggered, there will be no entitlement to any refunds of imputation credits.

Franking credit trading allows individuals who are not the economic owners of the shares to obtain the benefits associated with the imputation credits.

Dividend streaming arrangements provide for dividends franked to differing extent to be paid to shareholders most able to benefit from the imputation credits.

7.5.2 Specific anti-avoidance rules

An eligible organisation is denied a refund of imputation credits if one of the specific anti avoidance rules[86] applies.

The specific anti-avoidance rules will be triggered where, as the result of receiving a franked dividend either directly or indirectly, there is a related transaction.[87]

[85] Subsection 160ARDAB(8) ITAA36
[86] Section 160ARDAC ITAA 1936
[87] Subsection 160ARDAA(1) ITAA36

A related transaction exists if there is a connection with or as a result of the payment of the dividend or trust distribution. In other words, there are two inter-related transactions whose occurrence are inter-dependent on each other, that is, one transaction occurs because the other occurred.

The acquisition of a share cum-div (that is, the share comes with a right to receive a declared dividend) does not constitute a related transaction for the purpose of the anti-avoidance rules as it is a commercial arm's length transaction, which occurs regularly on an arm's length basis.[88]

The five anti-avoidance rules apply where there is:

(a) A reduced benefit to the eligible organisation[89]

The total value of the benefit received by the organisation is less than the sum of the dividend and the associated imputation credits.

Example[90]

"Poverty Relief, an eligible organisation, enters into an arrangement with a trust. Under the arrangement, the trust distributes to Poverty Relief a franked dividend received by the trust on condition that Poverty Relief buy supplies from, or use the services of, a particular entity.

The value of the benefit arising to Poverty Relief has been reduced by the agreement to buy supplies from, or use the services of, the entity."

Under these circumstances, the anti-avoidance provisions are triggered and the eligible organisation is not entitled to a refund of imputation credits.

(b) A benefit or a detriment provided by the eligible organisation or another entity[91]

The organisation or another entity provides a payment; transfers any property; or incurs any detriment, disadvantage, liability or obligation as a condition of receiving the franked dividend.

Example[92]

"A trust estate receives a franked dividend from a company and distributes it to an eligible organisation. The distribution is made on the understanding that the organisation (or a beneficiary of the organisation) will buy shares in a related entity of the trust.

Under the agreement with the trust (which was made in association with the payment of the distribution), the eligible organisation or another entity acquired property from an associate of the trust."

Under these circumstances, the anti-avoidance provisions are triggered and the eligible organisation is not entitled to a refund of imputation credits.

[88] Paragraph 1.30 of the Explanatory Memorandum of Schedule 2 of the *New Business Tax System (Miscellaneous) Act* 1999
[89] Subsection 160ARDAC(2) ITAA36
[90] Example 1.1 at paragraph 1.34 of the Explanatory Memorandum to the amendments to *New Business Tax System (Miscellaneous) Act* 1999
[91] Subsection 160ARDAC(4) ITAA36
[92] Example 1.9 at paragraph 1.52 of the Explanatory Memorandum to the amendments to *New Business Tax System (Miscellaneous) Act* 1999

Example[93]

"A trust estate receives a franked dividend from a company. The trust acquires property from a person for consideration comprising a cash payment and an undertaking by the trust to pass on the dividend it received to an eligible organisation beneficiary. Under the agreement between the trust and the person (which was made in association with the payment of the trust distribution), the trustee provided property to that person (i.e. another entity)."

Under these circumstances, the anti-avoidance provisions are triggered and the eligible organisation is not entitled to a refund of imputation credits.

(c) An advantage obtained by the payer of the dividend or trust distribution (or an associate of the payer)[94]

The company (or an associate of the company paying the dividend) or the trustee (or an associate of the trustee of a trust making the distribution) has obtained, may obtain, or may reasonably be expected to obtain a benefit, advantage, right or privilege.

Example [95]

"Poverty Relief, an eligible organisation, enters into an agreement with a trust, whereby a third party (not necessarily an associate of Poverty Relief) would be compelled to sell an asset it holds to the trust (or anyone else) for a fixed price if called upon to do so.

The third party has incurred a detriment or obligation (that is, to sell its asset if called upon) as a result of the agreement entered into between the trust and Poverty Relief in relation to the trust distribution."

Under these circumstances, the anti-avoidance provisions are triggered and the eligible organisation is not entitled to a refund of imputation credits.

(d) The full ownership of property not passing to the eligible organisation[96]

There is an *in specie* dividend (that is, a dividend comprising, wholly or partly, of property other than money) whose ownership does not pass immediately and absolutely to the eligible organisation.

Subject to the discretion of the Commissioner of Taxation,[97] the provisions will apply where there is no actual distribution from the trust during the same income year that the eligible organisation becomes presently entitled unless it is actually paid over or transferred in the form of property, including money.

Example[98]

"A company distributes an asset to an eligible organisation as an in specie dividend, but retains control over the asset. The ownership of the asset has not passed absolutely to the eligible organisation."

Under these circumstances, the anti-avoidance provisions are triggered and the eligible organisation is not entitled to a refund of imputation credits.

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[93] Example 1.10 at paragraph 1.52 of the Explanatory Memorandum to the amendments to *New Business Tax System (Miscellaneous) Act* 1999
[94] Subsection 160ARDAC(5) ITAA36
[95] Example 1.3 at paragraph 1.36 of the Explanatory Memorandum to the amendments to *New Business Tax System (Miscellaneous) Act* 1999
[96] Subsection 160ARDAC(6) ITAA36, subsection 160ARDAC(9) ITAA36
[97] Section 160ARDAC ITAA36
[98] Example 1.7 at paragraph 1.46 of the Explanatory Memorandum to the amendments to *New Business Tax System (Miscellaneous) Act* 1999

(e) An additional benefit obtained by another entity such as property including money directly or indirectly [99]

Example[100]

"A trust estate receives a franked dividend from a company. The trust enters into an arrangement with a school (which some beneficiaries of the trust attend) to distribute the franked dividend to the school building fund (an eligible organisation) as an alternative to an increase in school fees. The trust and its associates have received a benefit as a result of paying the dividend to the eligible organisation."

Under these circumstances, the anti-avoidance provisions are triggered and the eligible organisation is not entitled to a refund of imputation credits.

7.5.3 Special rule dealing with a controller

The anti-avoidance provisions will be triggered where a controller,[101] or associate, is treated as having benefited from a related transaction[102] because:

- the entity paying the dividend or trust distribution effectively controls the exempt organisation; and
- the controller or associate obtains, or may reasonably be expected to obtain, a benefit from the organisation; and
- a dividend or trust distribution is paid by the controller (or associate) to the eligible organisation; and
- within a six-year period, starting three years before the payment of the dividend or trust distribution, the organisation provides a benefit to the controller or associate.

The provision will not apply where the Commissioner of Taxation is satisfied that having regard to all the circumstances, it would be unreasonable to apply the anti-avoidance rule,[103] for example where the relationship between the eligible organisation and the controller (and its associates) is on a commercial arm's length basis.

7.5.4 The consequences of the anti-avoidance provisions

Where the anti-avoidance provisions are triggered:

- there is no entitlement to refunds of imputation credits;[104] or
- the present entitlement is disregarded resulting in a trustee's assessment.[105] Consequently there will be at least some net income of the trust to which no beneficiary is presently entitled to and the trustee will be assessed on that part of the trust net income at the top marginal rate of tax;[106] or
- a penalty may be imposed on the controller of the eligible organisation if the controller or an associate has benefited from the transaction in the first instance.[107] The amount payable is the amount of the benefit obtained reduced to extent that the imputation credits have been refunded by the organisation.[108]

[99] Subsection 160ARDAC(10) ITAA36
[100] Example 1.5 at paragraph 1.39 of the Explanatory Memorandum to the amendments to *New Business Tax System (Miscellaneous) Act* 1999
[101] The term 'controller' is defined in subsections 160ARDAA(2), (3), (4), (5), (6) ITAA36 and section 140-20 ITAA97
[102] Subsection 160ARDAE(1) ITAA36
[103] Subsection 160ARDAE(2) ITAA36, 160ARDAE(4) ITAA36
[104] Section 160 ARDAC ITAA36
[105] Section 160ARDAF ITAA36
[106] Section 99 or 99A ITAA36
[107] Section 160ARDAD ITAA36
[108] Subsections 160ARDAD(4) and (5) ITAA36

8. THE REFUND PROCESS

The refunds of imputation credits can only be claimed by the eligible resident taxpayers at the end of each financial year.

Eligible taxpayers who are required to lodge an income tax return will claim their refund of imputation credits on an assessment basis.

Other taxpayers entitled to a refund of imputation credits, such as low income earners and endorsed ITECs and certain DGRs, will need to lodge an approved form with the Australian Taxation Office.

Any other outstanding tax liabilities such as Fringe Benefit Tax and Goods and Services Tax will be offset against the refund of imputation credits and only the net amount, if any, will be paid to the taxpayer.

Additional information can be obtained from the ATO website: www.ato.gov.au; www.taxreform.ato.gov.au.

SELF-ASSESSMENT CHECKLIST

This checklist assists in determining whether your organisation is entitled to refunds of imputation credits.

Name of Organisation: ______________________________

ABN registration: ______________________________

1. Is your organisation authorised to make share portfolio type investments? YES / NO

- check the governing or constitutional documents of your organisation (such as the trust deed or the constitution);
- check whether the provisions under the relevant State Trust Act in respect of the "prudent investor" rule apply;
- check whether the investment activities of your organisation are in fact compliant;

If **No**, you should review the investment policies of your organisation and ensure they are compliant with the legal requirements.

If **Yes**, go to Question 2.

Further references: The Trust Act in your local jurisdiction.

2. Is your organisation an entity for tax purposes? YES / NO

- check the governing or constitutional documents for the legal status of your organisation i.e. a corporation, an unincorporated association, a trust or a partnership;

If **No**, you should seek professional advice as your organisation does not appear to be entitled to refund of imputation credits.

If **Yes**, go to Question 3.

Further references: Section 995-1 of the *Income Tax Assessment Act* 1997.

3. Does your organisation have a current Australian Business Number? YES / NO

- check your ABN application;
- check whether your application for an ABN has been revoked;
- check the status of your ABN by searching the Australian Business Register (ABR) internet site at www.business.gov.au or phone the ATO Business Tax Reform Infoline on 1300 137 619.

If **No**, complete the relevant ABN application form for lodgement with the ATO.

If **Yes**, go to Question 4.

Further references: Additional ATO Internet sites www.ato.gov.au or www.taxreform.ato.gov.au.

4. Is your organisation endorsed by the ATO as an ITEC or DGR? YES / NO

- check the written ITEC endorsement notice received from the ATO;

or

- if a DGR, check whether your organisation is listed as such by name in the income tax legislation using the internet site at www.business.gov.au;
- check that the endorsement of your organisation (ITEC or DGR) is still current.

If **No**, you should complete the relevant application form for lodgement with the ATO.

If **Yes**, go to Question 5.

Further references: Division 30 and 50 of the *Income Tax Assessment Act* 1997; Gift Pack; and the Charity Pack.

5. Is your organisation eligible for the refund of imputation credits? YES / NO

- check whether your endorsed organisation meet at least one of the four tests under section 160ARDAB ITAA36 (refer paragraph 7.3 of this paper).

If **No**, go to Question 6.

If **Yes**, go to Question 7.

Further references: Paragraph 7.3, page 16, of this paper.

6. Is your organisation a prescribed institution? YES / NO

- check whether your organisation is listed by name under the Australian Income Tax Assessment Regulations;
- check the written notification received from the Government on application for prescription;
- check that the written notification still current.

If **No**, your organisation is not eligible for refund of imputation credits. You should seek professional advice to investigate the possibility of implemented changes to ensure your organisation can meet at least one the statutory tests.

If **Yes**, go to Question 7.

Further references: Reg 50-50.1 of the *Income Tax Assessment Regulations* 1997; Subsection 30-85(5) of the *Income Tax Assessment Act* 1997.

7. If your organisation is a DGR, is it endorsed in its own right or for a gift fund, authority or institution it operates?

YES / NO

- check your written endorsement from the ATO.
- If your organisation is endorsed as a DGR for a gift fund, authority or institution it operates, then it is not entitled to refunds of imputation credits (refer subparagraph 7.3(c) of this paper).

If your organisation is endorsed as a DGR in its own right, go to Question 8.

Further references: Subparagraph 7.3(c), page 17, of this paper.

8. Are the dividends received directly from companies eligible for refunds of imputation credits?

YES / NO

- check from your investment portfolio whether the dividends are received directly by your organisation as a shareholder of a company;
- check whether the dividends were paid to your organisation on or after 1 July 2000;
- check whether the dividends are franked;
- check the information posted to the dividend statements received from the company.

If **No**, your organisation is not entitled to a refund of imputation credits from these dividend distributions. Continue with the checklist and go to Question 9.

If **Yes**, your organisation is entitled to a refund of imputation credits from these dividend distributions. Continue with the checklist and go to Question 9.

Further references: Division 67 of the *Income Tax Assessment Act* 1997.

9. Are the dividends received through trust distributions eligible for refunds of imputation credits?

YES / NO

- check whether the dividends are received indirectly by your organisation as a beneficiary of a trust;
- check whether the dividends were paid to your organisation on or after 1 July 2000;
- check whether the dividends were originally paid to the trust on or after 1 July 2000;
- check whether the dividends are franked;
- check the information posted to the trust distribution statements received from the trust.

If **No**, your organisation is not entitled to a refund of imputation credits from these dividend distributions. Continue with the checklist and go to Question 10.

If **Yes**, your organisation is entitled to a refund of imputation credits from these dividend distributions. Continue with the checklist and go to Question 10.

Further references: Division 67 of the *Income Tax Assessment Act* 1997; Chapter 5, page 8, of this paper.

10. Did your organisation receive a franked dividend distribution through a partnership? YES / NO

- Check the source of the dividend receipts.

If **No**, go to Question 11.

If **Yes**, your organisation is not entitled to refund of imputation credits from these dividend distributions. Continue with the checklist and go to Question 11.

Further references: Division 67 of the *Income Tax Assessment Act* 1997; Paragraph 5.1, page 8, of this paper.

11. Did your organisation receive a franked dividend distribution from an endorsed tax-exempt organisation? YES / NO

- check any statement issued by the endorsed tax-exempt organisation for relevant details.

If **No**, go to Question 12.

If **Yes**, your organisation is not entitled to refund of imputation credits from these dividend distribution. Continue with the checklist and go to Question 12.

Further references: Subsection 160ARDAB(8) of the *Income Tax Assessment Act* 1936; Paragraph 7.4, page 19, of this paper.

12 Is there a related transaction that could trigger the anti-avoidance provisions? YES / NO

- check that there is no reduced benefit to your organisation;
- check that there is no benefit or detriment provided by your organisation or another entity;
- check that there is no advantage obtained by the payer of the dividend or trust distribution or an associate of the payer;
- check that the full ownership of the dividend is passed on to your organisation;
- check that there is no additional benefit obtained by another entity;
- check that any entity controlling your eligible organisation has not received a benefit from a related transaction.

If **No**, go to Question 13.

If **Yes**, your organisation may not be entitled to a refund of imputation credits and the ATO may impose additional penalties. Your organisation should seek professional advice.

Further references: Paragraph 7.5, page 19, of this paper.

13. Can your organisation substantiate its refunds for imputation credits? YES / NO

- check that your organisation has received all the relevant shareholder dividend statements and trust distribution statements from the paying entity;
- check that the statements contain the relevant information i.e. whether the dividend is franked, unfranked or partially franked and confirm the date of payment;
- check that your organisation retains all the relevant documentation for at least five years from the date it lodged a claim for refunds of imputation credits.

If **No**, you should review your internal compliance control and ensure that your organisation implements appropriate record keeping policies.

If **Yes**, go to Question 14.

Further references: Section 262A of the *Income Tax Assessment Act* 1936.

14. Has the refund of imputation credits been correctly calculated? YES / NO

- the refund is calculated as the total amount of imputation credits associated with the eligible franked dividends received by your organisation;
- Any outstanding liabilities, if any, such as FBT and GST will be deducted from the refund of imputation credits and only the net amount will be remitted to your organisation.

If **No**, review all relevant documentation and take appropriate action to remedy any discrepancies.

If **Yes**, go to Question 15.

Further references: Instructions notes and examples are included at the back of the personalised application form sent annually to your organisation by the ATO; phone the ATO Business Tax Reform Infoline on 1300 137 619; or use the ATO internet site www.taxreform.ato.gov.au.

15. Has your organisation lodged a claim a refund of for imputation credits? YES / NO

- at the end of each financial year, your organisation will be required to complete a personalised application form sent to your organisation by the ATO.

If **No**, you should contact the ATO and request that an application form be sent to your organisation.

If **Yes**, you should complete the application form on behalf of your organisation for lodgement with the ATO from 1 July each financial year.

Further references: To enquire about the eligibility or the progress of your organisation' s application, phone the ATO on 13 2863 or write to the Commissioner of Taxation at P.O. Box 9990, Hobart, Tasmania, 7001.